

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 6893**

**BILL NUMBER:** HB 1514

**NOTE PREPARED:** Mar 12, 2009

**BILL AMENDED:** Mar 12, 2009

**SUBJECT:** Accounting for public funds.

**FIRST AUTHOR:** Rep. GiaQuinta

**FIRST SPONSOR:** Sen. Bray

**BILL STATUS:** 2<sup>nd</sup> Reading - 2<sup>nd</sup> House

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill increases the required surety bond for certain officials, and provides that the State Board of Accounts may require a higher surety bond for officials who have engaged in malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds.

The bill requires a deputy examiner, field examiner, or private examiner to make a preliminary report to the State Examiner if: (1) a substantial amount of public funds has been misappropriated or diverted or is unaccounted for; (2) there is a reasonable likelihood that the final examination report will include a finding that the entity that is the subject of the report failed to observe a uniform compliance guideline or failed to comply with a specific law; or (3) the malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for the public funds was committed by the officer or employee who is primarily responsible for ensuring compliance with laws regarding maintaining and accounting for the funds. It requires the State Examiner to provide a copy of the report to the Attorney General, and requires the Attorney General to bring a civil action against the delinquent employee or the official bond to recover misappropriated funds. The bill also authorizes the Attorney General to attach the assets of the delinquent employee, and makes conforming amendments.

**Effective Date:** July 1, 2009.

**Explanation of State Expenditures:** *State Board of Accounts (SBOA):* This bill allows the SBOA to fix the amounts of surety bonds for certain local officials at \$20,000 for each \$1 M of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. The amount must be at least \$20,000, but not more than \$300,000. If the State Examiner finds that certain local officials have engaged in

malfeasance, misfeasance, or nonfeasance that resulted in the misappropriation of, diversion of, or inability to account for public funds, an increased bond amount may be established.

The bill requires deputy examiners, field examiners, or private examiners to make reports to the State Examiner when: a substantial amount of public funds has been misappropriated or is unaccounted for; it is likely that they will find that a uniform compliance guideline was not observed, or a specific law was not complied with, or a public contract has not been lawfully executed; or malfeasance, misfeasance, or nonfeasance resulting in the misappropriation of public funds is committed by an official or employee responsible for the accounting of funds. These reports are to be provided to the Attorney General. An average of 20-25 such reports were provided to the Attorney General during 2005-2008. These provisions may increase administrative costs for the SBOA. As of October 31, 2008, the SBOA had 14 vacancies.

*Attorney General:* This bill provides for the Attorney General to bring a civil action against delinquent employees or the official bond to recover misappropriated funds. It is unknown how this provision will impact the Attorney General's office, because the impact will depend upon the extent that civil actions are necessary based upon findings from reports by the SBOA.

**Explanation of State Revenues:** *Court Fee Revenue:* The impact on civil actions is indeterminable, and would depend upon the extent that findings that officials were engaged in the acts that would be included in reports to the Attorney General from the SBOA. A civil costs fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the document storage fee (\$2), automated record keeping fee (\$7), judicial salaries fee (\$18), public defense administration fee (\$3), court administration fee (\$5), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**Explanation of Local Expenditures:** *Surety Bond Increases:* This bill increases the amount of surety bonds that are required to be filed by local government officials. The bill increases the amounts from \$15,000 to \$20,000 for each \$1 M of receipts of the officer's office during the last complete fiscal year before the purchase of the bond. The amount must be at least \$20,000, but not more than \$300,000. This change applies to the following officials: city controllers; city clerk-treasurers; town clerk-treasurers; Barrett Law fund custodians; county treasurers; county sheriffs; circuit court clerks; township trustees; and conservancy district financial clerks.

The amount of surety bonds that must be filed by controllers of solid waste management districts is increased from at least \$15,000 to at least \$20,000. Also, the amount of surety bonds that must be filed by any other individual is changed from at least \$8,500 to \$10,000.

These amounts must be fixed by the fiscal bodies of the respective units affected by this bill, unless they are fixed by the SBOA. Their current level of resources should be sufficient to implement the provisions of this bill. IC 5-4-1-8 states the following.

The official bonds of officers, if sufficient, shall be approved as follows:

- (1) Of county officers required to give bonds, by the clerk of the circuit court unless otherwise specified in this section.
- (2) Of county sheriff, county coroner, county recorder, county auditor, county treasurer, and clerk of the

circuit court, by the county executive.

(3) Of county assessor, township trustee, and township assessor (if any), by the county auditor.

(4) Of city officers, except the executive and members of the legislative body, by the city executive.

(5) Of members of the board of public works or of the board of public works and safety in cities, by the city legislative body.

(6) Of clerk-treasurer and marshal of a town, by the town legislative body.

(7) Of a controller of a solid waste management district established under IC 13-21 or IC 13-9.5 (before its repeal), by the board of directors of the solid waste management district.

(b) A person who approves an official bond shall write the approval on the bond.

(c) A bond must be approved before it is filed.

**Explanation of Local Revenues:** *Court Fee Revenue:* If the number of civil actions filed is impacted, local governments would be impacted due to receiving revenue from the following sources. The county general fund would receive 27% of the \$100 civil costs fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

**State Agencies Affected:** SBOA; Attorney General.

**Local Agencies Affected:** Circuit court clerks; County executives; County auditors; City executives; Town legislative bodies; Boards of directors of solid waste management districts; City controllers; City-Clerk treasurers; Town-Clerk treasurers; Barrett Law Fund custodians; County treasurers; County sheriffs; Township trustees; County auditors; Conservancy financial clerks.

**Information Sources:** LeGrand Clark, Attorney General's Office, 317-233-6581; *State of Indiana HRM Detail Staffing Report, 10/31/08.*

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